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Ms. Elizabeth Bowles
Chair
Broadband Deployment Advisory Committee
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: GN Docket No. 17-83 (Accelerating Broadband Deployment)

Subject: Arizona League of Cities and Towns, League of California Cities
and League of Oregon Cities Request for Consideration of Prior
Filings

Dear Ms. Bowles:

This firm represents the Arizona League of Cities and Towns, League of California Cities and League of Oregon Cities (collectively, "**Local Governments**") in matters related to the pending WT Docket No. 16-421, WT Docket No. 17-79 and WC Docket No. 17-84 (collectively, the "**Infrastructure Dockets**") before the Federal Communications Commission ("**FCC**").¹

As the Broadband Deployment Advisory Committee ("**BDAC**") seeks to finalize its recommendations to the FCC, Local Governments advise that collaboration, not preemption, will accelerate broadband deployment. First, industry comments misconstrue local regulations and compensation as "barriers" to broadband deployment. These comments belie the factual record and Congress' own directive in Section 253(c). Second, a collaborative approach to streamlining deployment is the only appropriate approach to accelerate broadband deployment because the FCC lacks authority under

¹ The League of Arizona Cities and Towns is a voluntary membership organization of the 91 incorporated cities and towns across the state of Arizona, from the smallest towns of only a few hundred in population, to the largest cities with hundreds of thousands in population. The League provides vital services and tools to its members, including representing the interests of cities and towns before the legislature and courts.

The League of California Cities is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety and welfare of their residents, and to enhance the quality of life for all Californians.

The League of Oregon Cities, originally founded in 1925, is an intergovernmental entity consisting of Oregon's 241 incorporated cities that was formed to be, among other things, the effective and collective voice of Oregon's cities before the legislative assembly and state and federal courts.

the Communications Act to preempt state and local authority in the manner suggested by industry comments.

For your additional consideration, we request that the BDAC review Local Governments' comments from the Infrastructure Dockets, the central arguments of which are briefly summarized as follows:

- Sections 332(c)(7) and 253 expressly regulate different services provided through different facilities and therefore cannot be harmonized to regulate both wireline and wireless deployments in the same way.²
- The FCC lacks authority to preempt “excessive” fees and other costs. Even if it could, “fair and reasonable compensation” under § 253(c) cannot be limited to strict cost recoupment or prohibit gross revenue fees because such an interpretation would directly contradict the statutory scheme of the Communications Act and the express intent in the legislative history.³
- State and local governments have protected proprietary interests in the public rights-of-way and the structures in the rights-of-way commonly used for broadband facilities. The Communications Act and long-standing legal precedent dictate that the FCC cannot regulate state and local governments in their proprietary capacities.⁴
- The FCC lacks authority to impose a deemed-granted remedy for mere failure to act under § 332(c)(7)(B)(ii) because § 332(c)(7)(B)(v) and its related legislative history unambiguously vest exclusive authority in the courts to resolve disputes.⁵
- Alleged delays in the deployment process are often attributable to acts or omissions by applicants, and further limitations on state or local governments would have little (if any) impact on deployment and create perverse incentives to game the shot clock. Accordingly, balanced rules that respect the proper role for local governance and reflect realities in local review process will accelerate broadband deployment.⁶

Local Governments firmly believe that broadband deployment is a critical component to bridge the digital divide and create more inclusive economic growth and prosperity. The most effective way to achieve these lofty goals is not by federal fiat, but rather by a measured and collaborative approach between industry, local, state and

² See Exhibit A at 37-39.

³ See Exhibit B at 15-20; *see also* Exhibit C at 26-31.

⁴ See Exhibit B at 2-11; *see also* Exhibit C at 22-24.

⁵ See Exhibit A at 14-25; *see also* Exhibit C at 2-9.

⁶ See Exhibit A at 1-13.



federal stakeholders. Local Governments request that your recommendations to the FCC reflect this reality.

Sincerely,



Robert C. May III
TELECOM LAW FIRM, PC

enc. Exhibit A (117 pages)
Exhibit B (83 pages)
Exhibit C (100 pages)

